

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEPHEN J ALLEN
Claimant

APPEAL NO. 11A-UI-15244-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BRIDGESTONE AMERICAS TIRE
OPERATIONS LLC**
Employer

OC: 10-23-11
Claimant: Respondent (2R)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 18, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 3, 2012. The claimant did participate. The employer did participate through (representative) Jim Funcheon, Human Resources Director; Tom Barrigan, Labor Relations Manager; Clay Clarkson, Area Business Manager; and Marquise Campbell, Supervisor.

ISSUES:

Was the claimant discharged due to job connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a tube machine operator full time beginning June 15, 1998 through November 4, 2011 when he was discharged. On October 23 the claimant's supervisor, Marquise Campbell approached him at the beginning of the work shift and told him that twenty dyes had to be run that night. The claimant was upset that such a large amount of work had to be completed and told Mr. Campbell so. The claimant needed to keep working so that others down the line in the production process could accomplish their tasks. The claimant told Mr. Campbell that he would not do twenty dyes that shift and asked him if he knew what had happened to the last supervisor who asked him to do twenty dies. Mr. Campbell told him no, and the claimant indicated that he had 'screwed over' the last supervisor. Mr. Campbell thought the claimant must have been joking. Shortly after Mr. Campbell left the work area, he was called back to the claimant's machine, as the claimant had shut down the machine. The claimant alleged that the machine was malfunctioning. A review by the maintenance operator revealed the machine to be working without any problems.

Mr. Campbell suspected that the claimant had indeed done as he threatened earlier when he was displeased by the amount of work he was being required to perform. Mr. Campbell moved the claimant off the machine and onto a forklift and reported the incident to his superiors. The claimant told Mr. Campbell that he was happy to drive the forklift until the regular supervisor returned to work. The claimant was brought into the office and in front of witnesses, including a union steward, told the employer that he was "just joking" about shutting down the machine. Another supervisor indicated that the claimant had engaged in similar behavior on October 12.

The claimant was suspended the next day when the employer determined that he purposefully shut down production because he was unhappy about the amount of work he had been tasked to accomplish. The employer's work rules provide that deliberately shutting down or negatively affecting production is an offense for which an employee may be terminated, even on the first offense.

The claimant has received unemployment benefits after the separation on a claim with an effective date of October 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant simply did not want to perform the work that was assigned to him. He believed that the supervisor was asking too much of him. The Administrative Law Judge is persuaded that the claimant did threaten to “screw over” Mr. Campbell who assigned him to complete the twenty dyes, but shutting down production. The employer’s evidence establishes there was nothing wrong with the machine when the claimant shut it down; he was simply following through on his threat to Mr. Campbell to slow down production because he thought it was too much work. The claimant engaged in similar behavior on October 12. The claimant’s contention at hearing that he never made the ‘threat’ joking or otherwise, even though he admitted it at a later meeting, is not persuasive. The claimant deliberately shut down production. Such conduct is willful job-related misconduct and is sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer’s account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual’s separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant’s separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even

though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The November 18, 2011 (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css